



Patients in Custody Under a Penal Authority



What's Changed?

- New policy for General Enrollment Period coverage effective dates (page 4)
- New Special Enrollment Period for formerly incarcerated people (page 4)

Substantive content changes are in dark red.

Medicare Policy

We generally won't pay for medical items and services for a patient who's incarcerated or in custody at the time they get items and services. In most instances, if a patient is incarcerated on the date of service (DOS) when they get items and services, we won't cover them according to these regulations:

- [42 CFR 411.4](#): We don't pay for services provided to a patient who has no legal obligation to pay for the service and no other person or organization has a legal obligation to provide or pay for the service
- [42 CFR 411.6](#): We don't pay for services from a federal service provider or other federal agency
- [42 CFR 411.8](#): We don't pay for services paid directly or indirectly by a governmental entity

Definition of People Who Are in Custody (or Incarcerated) Under a Penal Statute or Rule

Under [Medicare Program regulations](#), patients in custody (or incarcerated) include, but aren't limited to, people:

- Under arrest
- Incarcerated
- Imprisoned
- Escaped from confinement
- Under supervised release
- On medical furlough
- Required to live in mental health facilities
- Required to live in halfway houses
- Required to live under home detention
- Confined completely or partially under a penal statute or rule

Determining Whether a Patient is in Custody Under a Penal Statute or Rule

You can [check patient eligibility](#) with these online tools and services:

- [Medicare Administrative Contractor \(MAC\) secure internet portal](#)
- MAC interactive voice response (IVR) system
- Billing agencies, clearinghouses, or software vendors

If the patient's status is inactive, the automated response to your inquiry gives the dates of inactivity but doesn't give the reason for inactivity. The inactive status response may cause you to ask the patient about their incarceration status. You may also refer them to 1-800-MEDICARE (1-800-633-4227) if they don't know the reason for inactivity.

Medicare Claims Processing

If you submit a claim for items or services provided to a patient who's in custody (or incarcerated) on the DOS, we'll deny the claim. You or your billing agent will get a remittance advice (RA) explaining the denial. A Remittance Advice Remark Code (RARC) further explains an adjustment or gives informational messages that can't be explained with a claim adjustment reason code.

When denying claims for services provided to patients under penal custody, the RA will include **RARC N103**.

[42 CFR 405, Subpart I](#) applies to claim denials resulting from patient custody status and MAC-initiated overpayment recoveries based on a review of claims paid before getting notified of a change in the patient's custody status.

Medicare Policy Exceptions

Under [42 CFR 411.4\(b\)](#), we can pay for items and services provided to incarcerated patients **only when they meet both of these criteria**:

- State or local law requires those individuals or groups of individuals to repay the cost of medical services they get while in custody.
- The state or local government entity enforces the payment requirement by billing and seeking collection from all such individuals or groups of individuals in custody with the same legal status (for example, not guilty by reason of insanity), whether insured or uninsured. It must also pursue collection of amounts owed in the same manner and with the same effort that it pursues other debt collection. This includes any Medicare [deductible and coinsurance](#) amounts and the costs of items and services we don't cover.

Also, the state or local entity must provide:

- Evidence that routine collection efforts include lawsuits filed to get liens against incarcerated people's assets outside the prison and income from non-prison sources
- Rules and procedures used to bill and collect amounts paid for incarcerated people's medical expenses (for example, regulations, manual instructions, or directives)

Submitting Claims That Meet an Exception

If you provided items and services meeting the exception criteria outlined above, you should submit claims using the appropriate CPT or HCPCS code and the **QJ modifier**.

For inpatient claims when the incarceration period spans only a portion of the stay, hospitals should identify the incarceration period by billing all days, services, and charges that overlap the incarceration period as **non-covered**.

MACs randomly select a representative case sample (both Medicare and non-Medicare eligible) to determine whether state or local entities appropriately bill and collect amounts paid for incarcerated patients' medical expenses. For more information, find your [MAC's website](#).

Social Security Benefits Policy

Social Security benefits generally [aren't payable](#) for the months the person is confined to a jail, prison, or certain other public institutions for committing a crime. Benefits can be reinstated starting the month after the person is released; however, they first need to contact the Social Security Administration (SSA) to request reinstatement and provide a copy of their release documents.

Medicare Data on Incarcerated People

How does Medicare know people are incarcerated or in custody, and what should patients do to update their data?

CMS gets incarceration and custody data from the SSA. A penal facility's reporting practices may delay the release data. Therefore, people should [contact the SSA](#) to request benefits reinstatement because this also updates the release data in CMS systems and allows Medicare payments. If CMS records don't reflect the release within 60 days of benefit reinstatement, the patient should contact 1-800-MEDICARE (1-800-633-4227).

General Enrollment Period vs. Special Enrollment Period

- People who are [incarcerated or in custody](#) must continue paying their monthly Part B premiums (and Part A premiums, if required) while incarcerated to keep their coverage.
- If an incarcerated person loses their coverage, they can re-enroll during the General Enrollment Period **with coverage effective the following month.**
- If a person doesn't stay enrolled in Part B (or Premium Part A) while they're incarcerated, they may face a late enrollment penalty when they re-enroll. In that case, their monthly premium may go up 10% for each 12-month period they could've had Part B but weren't enrolled. In most cases, they'll have to pay this penalty for as long as they have Part B.
- **For people released from custody on or after January 1, 2023, a Special Enrollment Period is available if they missed an enrollment period due to their incarceration. If a person qualifies for and enrolls during this Special Enrollment Period, they won't have to pay a late enrollment penalty.**

Resources

- [Section 50.3.3 of the Medicare Benefit Policy Manual, Chapter 16](#)
- [Section 10.4 of the Medicare Claims Processing Manual, Chapter 1](#)

View the [Medicare Learning Network® Content Disclaimer and Department of Health & Human Services Disclosure](#).

The Medicare Learning Network®, MLN Connects®, and MLN Matters® are registered trademarks of the U.S. Department of Health & Human Services (HHS).